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From: Joe Jobe
Sent: Wed 5/28/2014 7:03:31 PM
Subject: NBB meeting with EPA
McCabe letter 5-24-14 (Final).docx

Dear Janet:

As a follow-up to our meeting last Thursday, please see the attached letter. Thank you,

Joe

Joe Jobe, CEO

National Biodiesel Board

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May 28, 2014

Janet McCabe
Acting Assistant Administrator for the Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Dear Assistant Administrator McCabe:

Thank you very much for your time in meeting with us on Thursday. I am writing this letter to follow up on our discussion and to formally request a meeting as soon as possible with Administrator McCarthy. As we reported to you on Thursday, in the six months since the announcement of the proposed rule 57% of our members have halted production. This represents most of our small and medium sized members whose businesses are in jeopardy. While some of our larger producers continue to hang on, our smaller producers are in danger of losing their businesses.

NBB represents both biodiesel and renewable hydrocarbon diesel companies spanning the full biomass-based diesel category. As the one domestic advanced biofuel industry that has demonstrated success and has caused the advanced biofuel category to realize its goals every year of the program, our industry has been harmed the most by 2014 RVO proposed rule. And our industry stands to be harmed the most if the final rule is not changed significantly as it pertains to the biomass-based diesel category.

We have received indications that your agency plans to increase nearly all the categories above what was in the proposed rule, except for the biomass-based diesel category. It is inconceivable to us why EPA would, in response to concerns about the ethanol blend wall, increase volumes of corn and sugarcane ethanol, but not increase biomass-based diesel – the one fuel that can help alleviate the ethanol blend wall by displacing imported Brazilian sugarcane ethanol.

We appreciate your assurance that the rule is not final until the Administrator signs it. However, if our current indications are accurate, it is the intention of EPA to leave the biomass-based diesel (D4) category at 1.28 billion gallons, while modestly increasing conventional biofuel (D6) and total advanced volumes (effectively increasing the D5 volume). While not confirming that this was indeed the agency's decision, you did convey a notion that this scenario should result in biodiesel filling most of the additional D5 volumes as it did in 2013. You seemed to make the argument that all non-cellulosic advanced biofuels should be thrown into the same category to compete with each other for volumes. You also questioned our strong assertions that it was Congress' intent to grow the biomass-based diesel category over time. You pointed out that there was no specific language in the statute requiring EPA to increase the biomass-based diesel category, therefore, Congress must not have meant for it to be

increased. This notion is quite distressing to those of us who were involved in the legislative process that led to the RFS-2.

One of the primary objectives of creating RFS-2 was to create and grow a renewable component in the diesel fuel pool, which the RFS-1 did not do. RFS-1 required obligated parties to add biofuels to the gasoline pool only, and had only one category of biofuel. And while biodiesel and other biofuels were eligible for the program, it was unlikely that any renewable fuels other than ethanol would be used for compliance. It was then-Senator Obama who first proposed amending the RFS-1 a year after it was enacted to create an alternative diesel requirement, in the American Fuels Act of 2006 and reintroduced it in 2007. This proposal eventually became the RFS-2. Here is a video clip of Senator Obama discussing his proposal. <https://www.youtube.com/watch?v=8WEv3KbtN78&feature=youtu.be>

This proposal which became the RFS-2 directly led to the four categories that we have today from the single category in the RFS-1. If Congress had intended all non-cellulosic advanced biofuels to compete against each other for the same volumes, as EPA's approach appears to be headed, Congress could have achieved this much more simply and efficiently by not even having a D4 category and simply combining everything into the D5 category. But they did not do that. They went to great effort and complexity to create the D4 category and develop the criteria (six factors of consideration) of how to sustainably grow the category over time. For that matter, Congress could have been even more efficient than that, by maintaining just one category as it was in the RFS-1 and simply increasing required volume. The fact that they did create the biomass-based diesel category was recognition of the importance of growing the renewable component in the diesel pool.

The establishment of categories was also a recognition of the very different and often changing dynamics between the gasoline and diesel fuel markets. Biodiesel does not participate in the gasoline market just as ethanol does not participate in the diesel fuel market. Therefore, it is flawed to try to pit biodiesel against ethanol and expect them to compete against each other. This would be like trying to have a high-jumper compete against a long-jumper. They are both field athletes but their events are not the same. There are domestic and global market dynamics in the gasoline, diesel fuel, biodiesel, and ethanol markets, as well as changing state and federal policy differences that make the blending economics favorable for one fuel one year, and the another fuel the next. In order to have a stable policy that will allow these different emerging fuels to get established and grow, Congress recognized that they require their own categories. This principle is fundamentally inherent in the structure of the RFS-2.

You asked on Thursday why biomass-based diesel was the only category that did not specifically require EPA to increase it to a certain level each year. The reason is that in 2007 when the law was passed, the biodiesel industry was only about 400 million gallons. One of the original goals for the BBD category being proposed was 2 billion gallons by 2015. <http://grist.org/article/obama-and-lugar-introduce-american-fuels-act/> We were not entirely sure we could get to that level in that timeframe without disrupting other markets. While other groups were advocating that their number be as high as possible, the biodiesel industry wanted to be conservative and responsible to make sure we did not over-promise.

Therefore, we worked with Congress to create a BBD program which ramped up to a billion gallons by 2012, and then allowed EPA to analyze six factors each year thereafter to determine how much we could sustainably grow the program. There is no other reason that Congress would have required EPA to go through this process other than to determine the achievable growth level. It is impossible to say that our request for a modest increase to 1.7 billion is not achievable when we achieved 1.8 billion in 2013.

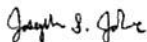
This approach was very well articulated by your agency in the 2013 RVO rulemaking when you increased the volumes from 1 billion gallons to 1.28 billion gallons. Now it appears that the agency may be headed toward not only abandoning that responsible and reasonable approach but possibly even denying Congress' will by reversing the progress of the RFS-2 and trying to make it look like RFS-1.

In our official comments to the proposed rule, we documented extensively the Congressional record which proves conclusively that it was everyone's understanding that the BBD category was to be increased over time. I urge you to please review that portion of our comments.

For further confirmation of the truth of these assertions, you need only ask your boss, President Obama. The RFS-2 was one of Senator Obama's landmark policy successes from his Senate career. I strongly urge you to take this matter to him directly. We are confident that the President would increase the volume as he did in 2013.

For all these reasons, it is imperative that we meet with Administrator McCarthy as soon as possible. It is extremely important that we meet with her to make sure she fully understands the consequences of this decision. Thank you again.

Sincerely,



Joe Jobe

CEO, National Biodiesel Board